

**STATEMENT OF HOWARD DUGOFF, ADMINISTRATOR
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
BEFORE THE HOUSE COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION**

MARCH 21, 1984

Mr. Chairman, members of the Committee, I am pleased to appear before you today to discuss the Department of Transportation's programs for pipeline and hazardous materials transportation safety, and to seek authorization for appropriations necessary to carry out the Department's responsibilities under the Natural Gas Pipeline Safety Act of 1968 (NGPSA), the Hazardous Liquid Pipeline Safety Act of 1979 (HLPsA), and the Hazardous Materials Transportation Act of 1974 (HMTA).

We are seeking the following authorizations for Fiscal Year 1985:

- o Under the NGPSA, \$6.9 million, of which \$3.4 million is for administration, operation, and research expenses associated with the gas pipeline safety program of the Materials Transportation Bureau (MTB). The remaining \$3.5 million would fund the grant-in-aid program in support of State-administered gas pipeline safety programs.
- o Under the HLPsA, \$900,000, all of which would be used to meet MTB's expenses in carrying out the Federal hazardous liquid pipeline safety program.
- o Under the HMTA, \$7.3 million all of which would be used to meet MTB's expenses in carrying out the hazardous materials transportation responsibilities of the Research and Special Programs Administration.

For the gas and hazardous liquid program, our authorization request is contained in H.R. 5058. However, an authorization bill for the hazardous materials program has not been finalized.

Mr. Chairman, although the preparation time for this hearing was relatively short, I believe the matters highlighted in my testimony will serve to inform the Committee on the progress we have made fulfilling our mandates under three of the Department's principal safety statutes. Because this hearing will, for the first time during my tenure as Administrator, focus on both of RSPA's primary missions at the same time, I believe the Committee will have a better appreciation of our efforts to address what has become the hallmark for each of the three programs - a strong and effective partnership with the States, in which they and the Department have clearly defined roles and each supports and synergizes the efforts of the other. If our communications with various Congressional committees over the last year are any indication, and I think they are, the Congress shares our view of the need and the value of this partnership.

PIPELINE SAFETY

In the three years since RSPA last appeared before the Congress seeking authorization for the pipeline safety programs, the initiatives that we noted as being of primary importance to our mission, have begun to take shape:

- o We have seen a strong effort on the part of several key states to

adopt necessary legislation and develop regulatory programs for operation of State hazardous liquid programs for intrastate pipelines. This effort of the States has been encouraged and assisted by our staff as a part of our ongoing relationship with our counterpart state pipeline programs.

- o In support of that effort we have issued this week a notice of proposed rulemaking that proposes the extension of jurisdiction of the HLPsA to intrastate liquid pipelines.
- o On April 1, 1983, the final rule requiring gas pipeline operators to have or participate in a damage prevention program became effective. Although we have not as yet compiled figures on the actual impact of this rule, early indications are that it is having the intended affect of reducing the leading cause of gas pipeline accidents - damage caused by forces external to the pipeline itself and beyond the control of the operator.

The \$4.3 million (\$3.4 million for gas and \$900 thousand for liquid) we are requesting in support of these initiatives and our ongoing regulatory and enforcement responsibilities, represents in the face of increasing budget restraint, a funding level we believe to be sufficient for meeting our operating needs. This is true largely as a result of the strong Federal/state enforcement partnership we have forged with our state counterparts.

We are committed, by philosophy as well as necessity, to fostering and encouraging our state partners to exercise, to the fullest extent of their

capabilities, as much of the intrastate enforcement burden as possible. Toward that end, we believe the gas pipeline grant program must be sustained at a level of Federal reimbursement sufficient to provide the incentive for continued state participation. Participating states (currently totaling 47 plus Puerto Rico and the District of Columbia) currently receive from the grant program, approximately 30% of their aggregate projected expenses. The \$3.5 million we are seeking for Fiscal Year 1985 will enable us to sustain approximately the same level of contribution.

In 1982, state agency inspection activity encompassed 21,500 person-days and resulted in the inspection of 4,147 operators and identification of 12,235 instances of non-compliance. The efforts of the state programs have encouraged pipeline operators to devote increased resources and improved state-of-the-art technology to the design, construction, testing, operation, and maintenance of their systems, and to develop more effective training and public awareness programs. I have every reason to expect that this same level of achievement can be realized on the hazardous liquid side as well, as states begin to implement their program on the basis of what they have learned from their gas experience. I think it is important to note that the state effort to enter the hazardous liquid arena is particularly noteworthy since no Federal grant program has been implemented. I believe this fact demonstrates the kind of state commitment to pipeline safety that is indispensable to the Department's ability to fulfill its statutory mandates under the HLPSA.

Whether the problem is the prevalence of corrosion of pipelines in small municipal systems in the Southeast or improperly installed or malfunctioning equipment on transmission or distribution lines, the MTB focuses its inspection resources on the basis of potential risk. This concept is applied in the broad sense

to the entire range of our jurisdiction, as well as within discrete categories of our regulated population, and is necessary for the effective utilization of our limited resources. We also encourage its use by the states - which enhances the effectiveness of their programs, but just as important, through review of their various reports, we are able to determine potential patterns of pipeline deficiency or operator non-compliance. The challenge of course is to be able to convert this knowledge to remedial action, and toward this end we are continually refining our data collection, retrieval and evaluation capabilities.

I think it is important to note that enforcement should be considered as one end of a continuum of efforts necessary to achieve regulatory compliance and, in consequence, enhance safety. It is essential that we pursue effective complementary programs all along that continuum. This involves making operators (as well as the states) fully aware of our regulations and then assuring that their level of understanding is converted into safe practices. This process maximizes the likelihood of compliance with the regulations currently in existence, and serves as a primary and effective resource for identifying whatever new regulatory initiatives may be necessary.

HAZARDOUS MATERIALS

The hazardous materials transportation safety program, which has been evolving over many years, especially since its inception under the Hazardous Materials Transportation Act (HMTA) in 1975, was the focus for an unparalleled level of activity during the last year. That activity, and the issues associated with it, represent both the source for a review of where we are today, and the basis for charting our course in the future. Recognizing the resource constraints that have

future. Recognizing the resource constraints that have been with us for several years and will in all likelihood remain with us, I am nonetheless very confident that this program has vitality and a stimulating non-Federal environment sufficient to provide the means for this Department to meet not only its statutory mandates but also the needs of all our constituents - the public, industry, and government.

As I alluded to previously, we believe that this optimism can be justified only if the Federal government can work in partnership with state and local governments. Defining that relationship - reconciling the vital interests of each partner - will not always be easy. Fortunately, Congress built into the HMTA a mechanism for achieving reconciliation, and over the last year we have witnessed a great deal of activity in this area:

- o In a landmark decision for our regulatory program, the Supreme Court upheld the validity of our routing rule governing the highway transportation of radioactive materials (HM-164), thereby establishing the Federal standard against which the routing requirements of state and local governments can be measured for consistency.
- o Also on the judicial front, the District Court for the Northern District of Ohio rejected a challenge by the State of Ohio to Appendix A to Part 177 of the Hazardous Materials Regulations (adopted under the HM-164), wherein the Department identified, for the purpose of guidance to state and local governments, types of state and local transportation requirements which would be considered "inconsistent" within the meaning of the preemption provisions of the HMTA.

- o We have initiated an omnibus inconsistency ruling proceeding to examine the requirements of nine state and local jurisdictions in Michigan, New York, and Vermont concerning the highway carriage of radioactive materials. These rulings will establish their own "administrative landmarks" in this area, and will serve to further define the respective roles of the three levels of government in hazardous materials transportation regulation.

It is important to note that despite the fact that Congress has assigned to the Department a primary role in this definitional reconciliatory effort, a great deal of impetus is provided by the other principals involved - state and local governments, industry, and the Congress. At the present time, a coalition of state and local government associations and industry representatives is seeking changes in the HMTA to address points of particular interest to that large segment of the hazardous materials transportation population in the areas of defining the role of state and local governments and emergency response capability. Our examination of the coalition's proposals is ongoing; however, we see in the proposals much common ground particularly a shared view that state and local emergency response forces need improved training and equipment and recognition that the cost of these improvements should not be paid for from general revenues.

Congress itself is currently examining the hazardous materials transportation safety effort in several key areas. Whether the vehicle is Representative Weiss' bill proposing substantial changes in the Department's current preeminent position, or Representative Oaker's proposal to restrict the shipment of spent nuclear fuel

through amendments to the Nuclear Waste Policy Act, the essential point is that all parties involved in this facet of public policy are taking a new hard look at what we've got and where we need to go. We welcome this ferment of ideas and solutions, and are committed to providing the leadership role to bring them to fruition.

There are other areas I would like to highlight as being of particular importance. MTB's ongoing regulatory program has made substantial progress toward clearer, more concise regulations that allow for technological advances and innovative practices. We have just issued, with the EPA, rules requiring the use of a Uniform Hazardous Waste Manifest form to assure consistency in this important area. Our contributions and recommendations to international standards-setting organizations are creating an ever-increasing level of international regulatory harmony, facilitating the movement of hazardous commodities between nations without compromising public safety. To this end, we are proceeding with development of a notice of proposed rulemaking that would adopt in large part the international scheme of performance oriented standards for hazardous materials packagings.

Of all our recent accomplishments in the hazardous materials field, I believe the most significant have been in the area of standards enforcement, an endeavor absolutely central to the credibility of any safety regulatory program. Responsibility for enforcement of the Federal hazardous materials transportation regulations is divided among several of the Department's operating administrations. This decentralized approach, involving frequent and close coordination among the enforcement teams of the modal administrations, is extremely cost-effective.

Because of their vast numbers, however, the assurance of regulatory compliance by highway carriers of hazardous materials is virtually unachievable in practice through an exclusively Federal enforcement effort. For this reason, and in furtherance of the Federal/state partnership I noted previously, we have been working to engage the states in enforcement activities within their jurisdictions through our State Hazardous Materials Enforcement Development (SHMED) Program. RSPA's assistance enables states to develop enforcement capabilities within existing public safety agencies (most commonly the highway patrol) thereby vastly increasing total resources devoted to safety enforcement. In FY-84, the program will achieve maximum participation of 25 states. Phasing down of Federal financial support will begin in FY-85, and all contracts will be completed by FY-87. We are now working to assure that the states developing enforcement capabilities under the SHMED program will be assisted to exploit these capabilities on a continuing basis under the new grant-in-aid program for motor carrier safety enforcement created by section 402 of the Surface Transportation Assistance Act. At the present time, 42 states participate in the program, and we are encouraged that by the close of FY 85 nearly all states will be in the program, at least under the development grant phase.

The mobilization of state personnel to augment Federal enforcement of hazardous materials standards in the highway mode represents no less than a breakthrough development in this safety regulatory field- the aggregate of available enforcement resources promises finally to be generally commensurate with the need. However, there remain hazardous materials enforcement problems - typically involving unique materials or combinations of materials, novel containment system technologies, or complexities of the transportation system itself - that require a synthesis of skills, experience, and authority not available

within states or within the DOT modal administrations.

To deal with such problems, we have requested appropriations to enable a small but critical expansion of the RSPA enforcement effort to provide the specialized management and technical capability needed to complement existing Federal and state enforcement resources and exploit them to the fullest effect. The new effort will focus principally on problems of the hazardous materials delivery system, detected by the Department's enforcement staffs or those of the states, that are national or international in scope. It will involve the creation of a highly mobile enforcement team embodying a wide mix of skills, experience, and technical expertise that will enable it to provide the leadership necessary to handle transportation problems that transcend geographical boundaries, modal limits, or agency jurisdictions. With the cooperation of state and local governments, other Federal agencies, foreign countries, and international agencies concerned with hazardous materials transportation, it will investigate system-wide and cross-cutting non-compliance problems and move quickly to effect appropriate enforcement and corrective actions.

Many of the improvements that have been made in the Federal hazardous materials safety program over the past several years comport with recommendations of a report on hazardous materials transportation issued in 1983 by the Transportation Research Board (TRB). Among its recommendations was one calling for the establishment of an advisory group comprised of officials representing the regulated industry and Federal, state, and local governments.

Historically, we have engaged in close and frequent dialogue with representatives of state and local government, other concerned Federal officials,

and with industry organizations. Our contacts with these parties, although extremely useful, have generally been informal and ad hoc. The TRB report, and similar suggestions from various program constituents, persuaded us that our process for obtaining advice and information from knowledgeable and interested outside parties should be made more formal and structured.

We have accordingly, established a new National Hazardous Materials Transportation Advisory Committee, under authority of the HMTA and the Federal Advisory Committee Act, to advise the Secretary on matters relating to our hazardous materials safety program. We expect it to provide a uniquely apt forum for the development, consideration, and communication of information from a knowledgeable independent perspective. While we certainly do not intend to shift the focus of decision-making from the Federal government, the committee will be a valuable resource for identifying issues of common concern, evaluating approaches and solutions, and communicating broad-based, non-Federal recommendations resulting from joint deliberations.

To complete this overview of the hazardous materials program, I would like to discuss an area significantly affected by our efforts at defining jurisdictional reach and program responsibilities - training. In the context of hazardous materials safety, training subject matter is of two types - compliance/enforcement training, and emergency response training. At the Federal level, the former is the province of the Department, the latter is primarily the responsibility of the Federal Emergency Management Agency (FEMA), as a component of its overall emergency preparedness mission.

The Department recognizes that the training needs of government inspection

personnel impose a unique obligation on it, particularly in light of our efforts to increase state involvement in enforcement. We are meeting this responsibility at the Transportation Safety Institute in Oklahoma City. We believe that its training capacity is sufficient to meet all current requirements for Federal and state hazardous materials inspector training.

With respect to the FEMA mission of emergency preparedness, the Department serves as a valuable source of technical expertise, and we expect to work closely with FEMA and to provide our expertise in support of that agency's guidance for planning and response procedures.

There is one aspect of emergency response where we do have direct involvement, and that is through dissemination of the Emergency Response Guidebook. Over 1.3 million copies of the Guidebook have been distributed to state and local emergency response personnel and its acceptance and use represents a situation of maximum return on a Federal safety investment.

Mr. Chairman, that concludes my statement. I know that the Committee is vitally interested in several of the areas I have highlighted today. To assist me in responding to the questions you and the membership may have, I have asked Lee Santman, the Director of the Materials Transportation Bureau, to join me.

Thank you